

2. Equitable Interests by Operation of Law

Equitable interests in land arise by operation of law through resulting trusts, constructive trusts, and proprietary estoppel. These arise without writing and fall within the s 53(2) PLA exception (*writing requirements in s 53(1)* PLA do not affect the creation or operation of resulting, implied, or constructive trusts). Courts of equity exercise jurisdiction to impose these interests to prevent unconscionable retention of property.

EXAM TRIGGERS -- LOOK FOR:

Property registered only in one party's name but another party contributed -- PPRT or CICT analysis

Verbal promise or common understanding that a party would receive an interest in property -- CICT or estoppel

Cohabiting parties pooled resources for joint domestic/commercial venture that has now broken down -- Baumgartner JVCT

Party gave up opportunities, performed unpaid labour, or made irreversible life decisions on faith of a promise -- estoppel (*Sidhu; Giumelli*)

Husband-to-wife or parent-to-child transfer without consideration -- presumption of advancement may apply

Married couple buying matrimonial home -- Cummins presumption of equal shares (*but see Bosanac qualification*)

2.1 Resulting Trusts

Resulting trusts are presumed (default) positions that equity adopts to resolve disputes about beneficial ownership. They arise in two transactional situations: voluntary transfers and purchase money contributions. Equity presumes an intention to retain the equitable interest based on the absence of consideration.

Resulting Trust Type	When It Arises
Voluntary Transfer RT	A transfers property to B without consideration. Equity presumes B holds on trust for A. Only applies where the transferor's intention cannot be ascertained from surrounding circumstances.
Purchase Money RT (PPRT) -- Purchase by A in name of B	Only A contributes to purchase price but land is in B's name. Equity presumes B holds entirely on trust for A.
PPRT -- Purchase by A in names of A and B	Only A contributes but both registered. Equity presumes B holds their share on trust for A.
PPRT -- Purchase by A and B in name of A	Both contribute but only A is registered. Equity presumes A holds on trust for self and B proportionate to contributions.

PPRT -- Unequal contributions by registered JTs

A and B are JTs but contributed unequally. Equity presumes they hold as TCs proportionate to contributions (disrupting the JT).

What counts as a contribution to the purchase price (*Calverley v Green*): includes (a) moneys actually paid; (b) liability assumed under a mortgage at the time of purchase (not just actual repayments); (c) costs associated with purchase (stamp duty, registration fees). Post-purchase mortgage repayments by one party are NOT contributions to the purchase price, though they may be relevant to rebut the presumption.

Timing: only contributions at or before the time of purchase are counted (*Calverley v Green*). *Bosanac v Commissioner of Taxation*: the key factor is the intention of the parties immediately before, at, or immediately after the time of purchase. Consider business knowledge, prior dealings, and the context of the relationship.

Bosanac qualification: the presumption of resulting trust is not a starting point -- it is a fallback position when the evidence is truly equivocal. Where there is positive evidence of intention (either way), the court starts with that evidence rather than the presumption (*Gordon and Edelman JJ in Bosanac*).

Presumption of Advancement

Where the relationship between the parties is of a certain kind, equity presumes the opposite: that the transferor/contributor intended to make a gift (advance) to the other party. The presumption of advancement applies in three relationships: (1) husband to wife (or male fiancée to female fiancée); (2) parent (mother or father) to child -- not the reverse (*Brown v Brown*).

The presumption does NOT apply to: de facto/cohabiting couples (*Calverley v Green* -- *they are presumed to intend to maintain separate financial affairs*); child to parent; one sibling to another.

Matrimonial home (*Cummins v Cummins*): where married partners purchase property with the intention that it be their matrimonial home, it may be inferred that each spouse intended to hold in equal shares regardless of unequal contributions. *Bosanac* qualifies this: the *Cummins* presumption is just one factor -- the parties' actual intention (evidenced by all circumstances) is the primary focus.

Rebutting either presumption: any of the following, established from evidence contemporaneous with the transaction: (a) direct evidence of contrary intention (e.g., documents showing gift / loan to be repaid); (b) conduct implying contrary intention; (c) illegal purpose (e.g., transfer to evade tax -- but the illegal purpose must be demonstrated). Onus: the party seeking to rebut the presumption bears it.

SCRIPT: Purchase Price Resulting Trust Script

Step 1: Identify contributions to the purchase price and what is reflected on the Register. Does legal title reflect the contributions?

- -> IF A pays all but land in B's name: B holds entirely on resulting trust for A.
- -> IF A and B both pay but only A registered: A holds proportionate share on trust for B.
- -> IF A and B both pay but registered as JTs with unequal contributions: equity converts JT to TC in proportion to contributions (disrupting the four unities in equity).
- -> Contributions include: purchase price, stamp duty, registration fees, mortgage liability assumed at time of purchase (Calverley).
- -> Post-purchase mortgage repayments by one party are NOT contributions to purchase price (Calverley) -- but are relevant to rebuttal evidence.
- -> COUNTER-ARGUMENT: registered party will argue the contribution was a gift or was made as a loan already repaid. Onus on them to establish contrary intention.

WRITE: [Party A] contributed [amount/description] to the purchase price of [property], comprising [cash deposit / mortgage liability assumed / stamp duty]. [Party B] is [the sole registered proprietor / registered as co-owner as JT / TC]. Equity presumes [B] holds [their interest in] [property] on resulting trust for [A] in proportion to [A]'s contribution (Calverley v Green).

Step 2: Does the presumption of advancement apply? Husband-to-wife, male fiancée to female fiancée, or parent-to-child relationships trigger the counter-presumption.

- -> IF husband contributes to wife's title: presumption of advancement applies -- presumed gift.
- -> IF de facto couple: no advancement (Calverley) -- separate financial affairs presumed.
- -> IF parent-to-child: advancement applies (Brown v Brown) -- even for adult children.
- -> COUNTER-ARGUMENT: contributing party will argue contrary intention (e.g., loan not gift; evidence of agreement to repay).

WRITE: The relationship between [parties] is [husband/wife / de facto / parent/child / other]. The presumption of advancement [does / does not] apply. [As a de facto couple, Calverley confirms the presumption does not extend to de facto relationships -- separate financial affairs are presumed (Calverley v Green).]

Step 3: Can the applicable presumption be rebutted? Burden on the party prejudiced by the presumption. Evidence must be contemporaneous with the transaction.

- -> IF clear evidence of gift intention at time of transaction: RT presumption rebutted.
- -> IF evidence of loan arrangement: may rebut advancement presumption.
- -> IF matrimonial home: Cummins presumption of equal shares may arise; but Bosanac -- start with all evidence before applying presumption.
- -> IF illegal purpose (tax evasion): rebuts advancement, but courts will not assist recovery of illegal advantage.

- -> *COUNTER-ARGUMENT: party relying on presumption will argue no adequate contrary evidence was established at the time of the transaction.*

WRITE: The presumption *[is / is not]* rebutted because *[description of contemporaneous evidence of contrary intention -- e.g., documents signed at time of purchase showing a loan arrangement / parties treated the property as belonging solely to [A] throughout their relationship / no adequate evidence of contrary intention or gift exists at the relevant time (Bosanac)].*

2.2 Common Intention Constructive Trust (CICT)

A CICT arises when there is a mutual intention between the legal owner and the claimant that the claimant would acquire a specific proprietary interest in the property, the claimant acted to their material detriment in reliance on that intention, and it would be unconscionable for the legal owner to deny the interest (*Ogilvie v Ryan*). The CICT is institutional in nature - it arises from the moment the unconscionable conduct occurs, not from the date of judgment (*Parsons v McBain*). Common intention may form at any time (before or after acquisition).

NOTE

Distinguish CICT from resulting trust: a resulting trust addresses contributions to the purchase price -- no need to establish common intention. CICT addresses promises and common understandings about future proprietary interests, even where no monetary contribution was made at the time of purchase.

Common intention cannot be imputed (*Allen v Snyder*). It must be actual -- either express or properly inferred from words or conduct. A court cannot impose an intention the parties never had.

Detriment need not be financial (*Ogilvie v Ryan; Green v Green*). Any material disadvantage resulting from reliance on the common intention suffices -- it must exceed mere disappointment.

SCRIPT: Common Intention CT Script (*Ogilvie v Ryan*)

Step 1: Common Intention: Was there an actual mutual intention that the claimant would acquire a specific proprietary interest in the property? (*Ogilvie v Ryan*) Must be express or inferred from conduct -- cannot be imputed. Timing irrelevant -- may arise at any time (*Parsons v McBain*).

- -> *IF express agreement that claimant would have an interest (e.g., 'this will be yours'): strong common intention.*
- -> *IF inferred from course of dealing (e.g., parties treated property as jointly owned, made joint decisions): may establish common intention.*
- -> *IF property already acquired before intention arose: timing irrelevant -- CICT can still arise (Ogilvie v Ryan).*
- -> *IF only an expectation or hope, not a shared understanding: insufficient.*

- -> IF common intention must be identified specifically (e.g., fee simple, life estate, percentage share): what exactly did parties intend the claimant to receive? (*Ogilvie v Ryan*).
- -> COUNTER-ARGUMENT: legal owner will argue any representation was social, informal, and not intended to create proprietary rights. Or that parties never reached a shared understanding about the specific interest.

WRITE: There *[is / is not]* a common intention between *[parties]* that *[claimant]* would acquire *[specific interest -- e.g., a life interest / 50% fee simple / joint ownership of] [property]*. This is *[express, evidenced by [description] / inferred from [conduct, e.g., parties jointly managed the property, contributed to outgoings, and held themselves out as co-owners]]* (*Ogilvie v Ryan*).

Step 2: Detrimental Reliance: Did the claimant act to their material detriment in reliance on the common intention? (*Ogilvie v Ryan*) Detriment must be material -- need not be financial. Must exceed mere disappointment.

- -> IF financial contributions (renovations, mortgage payments, improvements): material detriment.
- -> IF non-financial contributions (unpaid domestic labour, caregiving, giving up alternative opportunities): material detriment (*Green v Green*; *Sidhu*).
- -> IF mere disappointment that the promise was not kept: insufficient.
- -> COUNTER-ARGUMENT: legal owner will argue claimant's conduct was motivated by affection, love, or duty -- not by the common intention. Respond: the common intention need not be the sole reason, only a significant contributing factor.

WRITE: *[Claimant]* acted to their material detriment by *[description -- e.g., contributing \$X to renovations / providing unpaid care for 5 years while foregoing alternative employment / making mortgage payments]* in reliance on the common intention. This *[does / does not]* constitute material detriment within the meaning of *Ogilvie v Ryan* because *[it is more than mere disappointment and reflects a real financial or personal sacrifice]*.

Step 3: Unconscionability: Would it be unconscionable for the legal owner to deny the claimant's interest given the detriment suffered? (*Ogilvie v Ryan*)

- -> IF significant detriment suffered in reliance on a genuine common intention: unconscionable to deny.
- -> COUNTER-ARGUMENT: legal owner may argue the detriment was minimal and does not justify imposing a proprietary interest.

WRITE: It *[is / is not]* unconscionable for *[owner]* to deny *[claimant]*'s interest because *[claimant]* acted to their material detriment on the basis of a genuine mutual understanding about the interest they would receive, and allowing *[owner]* to renege would unjustly enrich *[owner]* at *[claimant]*'s expense.

Step 4: Conclusion and Timing: CICT is institutional -- arises at the time the relevant criteria are satisfied, i.e., when *[claimant]* detrimentally relied on the common intention in a way that makes it unconscionable for *[owner]* to renege (*Parsons v McBain*).

WRITE: A CICT [is / is not] established. [Owner] holds [property] on constructive trust for [claimant] [in fee simple / as to [X]% / for [claimant]'s life]. The trust arose at the time [description of the triggering detrimental reliance -- e.g., when [claimant] commenced renovation works / when [claimant] gave up alternative employment] (Parsons v McBain).

2.3 Joint Venture Constructive Trust (Baumgartner)

A JVCT arises where parties engaged in a joint venture pooled their resources for the purposes of that venture, the venture broke down without attributable blame, and it would be unconscionable for one party to retain the benefit of the property contributed to the venture (*Baumgartner v Baumgartner*; *Muschinski v Dodds*). Unlike the CICT, the JVCT does not require a specific promise about a specific proprietary interest. It responds to unjust enrichment from the failure of a joint endeavour.

Domestic and commercial arrangements both qualify: The original cases arose from cohabitation (*Muschinski*; *Baumgartner*). A wholly or partially domestic arrangement is sufficient.

No physical pooling required: Parties need not have a joint bank account. The key is that each made contributions to a shared endeavour (*Baumgartner*). Contributions may be financial or non-financial (*labour, domestic work, renovation -- Muschinski v Dodds*).

Blame: Only criminal conduct (e.g., domestic violence) will constitute assignable blame. Infidelity, growing apart, personal incompatibility, or relationship breakdown without violence will not constitute blame (*Muschinski*).

Timing and nature of trust: JVCT is generally remedial rather than institutional. The court may fix the trust as arising retrospectively, prospectively, or from the date of judgment (*Muschinski v Dodds per Deane J*).

Consider third-party interests when fixing the date.

Division: Court generally begins with a presumption of equality and adjusts based on contributions (*Baumgartner*).

SCRIPT: Joint Venture CT Script (Baumgartner)

Step 1: Underlying Joint Venture: Is there a joint venture relationship or endeavour? (*Baumgartner*; *Muschinski v Dodds*) Commercial or domestic -- both qualify.

- -> IF cohabiting couple purchasing and maintaining property together, pooling income: JV established.
- -> IF commercial partners acquiring land for shared business: JV established.
- -> IF arrangement is one-sided (only one party contributing while the other receives): may not constitute a joint venture.